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**GKN Sinter Metals, Inc. and International Union,
United Automobile, Aerospace and Agricultural
Implement Workers of America (UAW), AFL-
CIO. Case 7-CA-47501**

October 22, 2004

DECISION AND ORDER

BY MEMBERS LIEBMAN, SCHAUMBER, AND MEISBURG

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed on May 18, 2004, the General Counsel issued the complaint on June 14, 2004, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 7-RC-22411. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting an affirmative defense.¹

On July 20, 2004, the General Counsel filed a Motion for Summary Judgment. On July 22, 2004, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent and the General Counsel filed responses.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer, the Respondent admits its refusal to bargain, but contests the validity of the certification based on its objections to conduct alleged to have affected the results of the election. In its response to the Notice to Show Cause, dated August 4, 2004, the Respondent asserts that it extended recognition to the Union prior to the filing of the General Counsel's motion on July 20, 2004, and that the Respondent has been communicating with the Union to establish bargaining dates. The Respondent

¹ The Respondent denies knowledge or information sufficient to form a belief as to the truth of the complaint allegation stating that the charge in this proceeding was filed by the Union on May 18, 2004, and a copy was served on the Respondent on May 19, 2004. However, a copy of the charge and the certificate of service are included in the record, showing the dates as alleged, and the Respondent does not refute the authenticity of these documents.

contends that therefore the General Counsel's motion was "wholly unnecessary," and that no further action is required in this matter. We disagree.

The Board and the courts have held that where an employer continues to challenge the validity of a union's certification, it is effectively refusing to bargain with the union, even where the employer has stated that it is willing to engage in negotiations. See *Fred's Inc.*, 343 NLRB No. 22 (2004), and cases cited therein (Board found refusal-to-bargain violation even where respondent had recognized and was bargaining with the union, because the respondent had filed an answer to the complaint denying the validity of the union's certification, and had not disavowed this intention despite its willingness to engage in negotiations). Thus, an employer "may negotiate with, or challenge the certification of, the Union; it may not do both at once." *Terrace Gardens Plaza, Inc. v. NLRB*, 91 F.3d 222, 225 (D.C. Cir. 1996).

Here, the Respondent's assertion in its August 4, 2004 response, in which it stated that it has recognized the Union and is seeking to establish bargaining dates, is inconsistent with its June 24, 2004 answer to the complaint, in which it admitted that it has failed to bargain and asserts as an affirmative defense that "the Certification issued . . . is null and void, for the reasons set forth by the Respondent in connection with the processing of the Petition for Certification of Representative filed in NLRB Case No. 7-RC-22441 [sic]." Even though the Respondent claims that it has recognized the Union and is willing to bargain, it has not disavowed its intention to test the Union's certification, as set forth in its answer to the complaint. Therefore, as in *Fred's, Inc.*, supra, the Respondent is impermissibly attempting to challenge the Union's certification while simultaneously engaging in bargaining. Accordingly, we find that the Respondent has not established that it has unconditionally recognized the Union and engaged in good-faith bargaining.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Delaware corporation with its headquarters and place of business at 8111 Middlebelt Road, Romulus, Michigan, has been engaged in the manufacture and nonretail sale of automobile parts. During the calendar year 2003, a representative period, the Respondent, in conducting its business operations described above, had gross revenues in excess of \$500,000 and purchased goods valued in excess of \$50,000 from points located outside the State of Michigan and had those goods shipped directly to its Romulus facility. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW), AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Certification*

Following the election held April 23, 2003, the Union was certified on April 30, 2004, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees employed by the Respondent at its facility at 8111 Middlebelt Road, Romulus, Michigan, but excluding all office clerical employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. *Refusal to Bargain*

Since about May 4, 2004, the Respondent, by its agent Glenn Johnson, has refused to meet and bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit. We find that the Respondent has thereby unlawfully failed and refused to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after May 4, 2004, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, GKN Sinter Metals, Inc., Romulus, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW), AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time production and maintenance employees employed by the Respondent at its facility at 8111 Middlebelt Road, Romulus, Michigan, but excluding all office clerical employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Romulus, Michigan, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 7

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 4, 2004.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. October 22, 2004

Wilma B. Liebman, Member

Peter C. Schaumber, Member

Ronald Meisburg, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW), AFL-CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time production and maintenance employees employed by us at our facility at 8111 Middlebelt Road, Romulus, Michigan, but excluding all office clerical employees, guards and supervisors as defined in the Act.

GKN SINTER METALS, INC.